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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

DA 97- 554

In the Matter of	)	
	)	
Investigation of Alascom, Inc.,	)	CC Docket No. 95-182
Interstate Transport and Switching Services	)	
	)	
Alascom, Inc.	)	Transmittal No. 852
Revisions to Tariff F.C.C. No. 11	)	

**ORDER**

**Adopted:** March 14, 1997; **Released:** March 14, 1997

By the Chief, Competitive Pricing Division, Common Carrier Bureau:

**I. INTRODUCTION**

1. On November 15, 1996, Alascom, Inc. (Alascom), filed Transmittal No. 852 to revise its Tariff F.C.C. No. 11 for its common carrier interexchange services provided in Alaska (Alaska Services).<sup>1</sup> These tariff revisions are scheduled to become effective March 15, 1997.<sup>2</sup> The proposed tariff revisions would change certain transport and switching rates, lengthen the time interval to implement service changes requested by customers, delete certain switching centers, and, otherwise, define, change, and clarify various terms and conditions in this tariff.<sup>3</sup>

2. On December 2, 1996, General Communication, Inc. (GCI), filed a petition to suspend and investigate the proposed tariff revisions (GCI Suspension Petition), and ATU Long Distance, Inc. (ATU-LD), filed a "Petition to Enforce 90 Day Notice Period of Alaska Market Structure Order, and to Reject, or In the Alternative, to Suspend and Investigate (ATU-LD Rejection Petition)." ATU-LD filed a supplemental petition on December 10, 1996 (ATU-LD Supplemental Petition). Various responsive pleadings have

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<sup>1</sup> The Alaska Services offered by Alascom enable other domestic interexchange carriers to provide telecommunications service to and from Alaska.

<sup>2</sup> At our direction, Alascom deferred the effective date of its proposed tariff from January 1, 1997, to February 13, 1997. See Alascom Transmittal No. 865, issued Jan. 8, 1997. We later directed Alascom to defer the effective date to March 15, 1997. See Alascom Transmittal No. 872, issued February 13, 1997.

<sup>3</sup> Alascom, Inc., Revisions to Tariff F.C.C. No. 11, Trans. No. 852, filed Nov. 15, 1997, Description and Justification (D&J) at 1-3.

been filed.<sup>4</sup>

## II. CONTENTIONS

3. GCI and ATU-LD claim that Alascom's Transmittal No. 852 raises the same questions of lawfulness as Alascom's Transmittal No. 790 that gave rise to the above-captioned investigation.<sup>5</sup> GCI claims that it would be unlawful for Alascom to maintain, as provided in the proposed tariff, separate switching rates for intra-Alaska Bush and non-Bush calls because Alascom now has only one switching center serving both Bush and non-Bush areas.<sup>6</sup> ATU-LD contends that Alascom's division of locations between Bush and non-Bush areas and its assignment of joint and distributed costs to these areas are unreasonable. ATU-LD also claims that Alascom's overall ratemaking process and the resultant rates are unlawful;<sup>7</sup> that the rates proposed by Alascom are excessive, particularly when compared to those proposed 15 months earlier in Transmittal No. 790;<sup>8</sup> that Alascom fails to adequately explain certain changes in the cost support for these transmittals;<sup>9</sup> that the proposed tariff would unlawfully discriminate in provision of capacity to competitors; and that it is not necessary for Alascom to extend from 25 to 60 days the time to implement service changes requested by customers.<sup>10</sup>

4. GCI requests that Alascom's transmittal be suspended and made subject to the instant investigation. ATU-LD urges that the tariff be suspended for longer than one

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<sup>4</sup> Alascom replied to the GCI Suspension Petition and the ATU-LD Rejection Petition on December 12, 1997 (Alascom Reply), and on December 20 Alascom filed a "Supplemental Reply" to the ATU-LD Supplemental Petition (Alascom Supplemental Reply). On December 30, 1996, ATU-LD filed a "Response of ATU-LD to Supplemental Reply of Alascom, Inc. (ATU-LD Response)." On January 10, 1997, Alascom filed a motion to strike the ATU-LD Response (Alascom Motion to Strike) and a separate "Response of Alascom, Inc. (Alascom Response)." ATU-LD, on January 22, 1997, filed an "Opposition of ATU-LD to Motion to Strike of Alascom, Inc. (ATU-LD Opposition to Motion)." On February 3, 1997, Alascom responded to the ATU-LD Opposition to Motion (Alascom Response to Opposition).

<sup>5</sup> GCI incorporates its earlier petition against Alascom Trans. No. 790. In that petition, GCI objected to (a) Alascom's allegedly erroneous distinctions between the Bush and non-Bush categories; (b) Alascom's allegedly incorrect calculation of certain switching rates; (c) Alascom's allegedly improper inclusion of certain originating and terminating minutes of use in the construction of its transport rate; (d) Alascom's alleged violation of requirements that all services between Alascom and AT&T be offered to other carriers under public tariff or published contract. GCI Suspension Petition at 4 n.10.

<sup>6</sup> GCI Suspension Petition at 4-5.

<sup>7</sup> ATU-LD Rejection Petition at 8.

<sup>8</sup> ATU-LD Supplemental Petition at 2.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at 7.

day in order to avoid alleged cash-flow burdens on new entrants like ATU-LD. Alternatively, ATU-LD claims that the proposed tariff should be rejected because Alascom filed it on 45 days' notice. ATU-LD contends that, under Section 69.3(a) of Commission's Rules, 47 C.F.R. § 69.3(a), and the applicable part of the Commission's *Market Structure Order*,<sup>11</sup> Alascom should have filed the proposed tariff revisions on at least 90 days' notice. ATU-LD contends that this error prejudiced ATU-LD because it had only 15 days -- rather than 25 days -- to prepare and file an opposing petition under applicable rules.<sup>12</sup>

5. In opposition to the GCI and ATU-LD petitions, Alascom states that it is appropriate to attribute a portion of the investment and expense of switching facilities to the Bush category because its remaining switching center in Anchorage handles Bush as well as non-Bush traffic.<sup>13</sup> Alascom also contends that its overall ratemaking methodology, and its division of locations and assignment of joint and distributed costs between the Bush and non-Bush categories are reasonable.<sup>14</sup> Alascom contends that 45 days' notice was the correct notice period for its tariff because Section 69.3(a) generally applies to tariffs for "access service" whereas its tariff is for interexchange services and because other requirements of that section do not conform to the requirements imposed by the Commission on Alascom.<sup>15</sup>

### III. DISCUSSION

6. We have reviewed the above transmittal, supporting materials, and subsequent pleadings. We find Transmittal No. 852 raises the same issues regarding rate levels, rate structures, and terms and conditions of service as those identified in the

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<sup>11</sup> ATU-LD Rejection Order at 4-6 (citing *Market Structure Order*, 9 FCC Rcd at 3027 (para. 23)).

<sup>12</sup> *Id.* at 4-6.

<sup>13</sup> Alascom Reply at 4.

<sup>14</sup> Alascom asserts these rate changes are primarily attributable to (a) a temporary, Commission-ordered \$150 million write down of Alascom's rate base; (b) Alascom's recent investments in new facilities; (c) Alascom's reallocation of some locations from the Bush to the non-Bush category; (d) mandatory annual changes in Alascom's Cost Allocation Plan (CAP); and (e) changes in more traditional cost factors such as depreciation and new investment. Alascom Supplemental Reply at 5; Alascom Response at 2-3.

<sup>15</sup> Alascom Reply at 2-3. For example, Alascom states that Section 69.3(a) contemplates two-year tariff periods, whereas the Commission requires that Alascom revise its tariff annually; that Section 69.3(a) anticipates bi-annual access tariff filings with an effective date of July 1, whereas the Commission has directed Alascom to file these interexchange tariff revisions with an effective date of January 1; and that while access service tariffs revisions filed under Section 69.3(a) are limited to rate level changes, the annual revisions to this interexchange services tariff are not limited in this way.

*Transmittal 790 Suspension Order*.<sup>16</sup> For example, the proposed tariff, like the earlier Transmittal Nos. 790, 797, and 807, raises questions regarding the adequacy of Alascom's cost support and the extent to which the terms and conditions in the proposed tariff comply with the Communications Act and relevant Commission orders. We conclude, therefore, that significant questions of lawfulness have been raised concerning Alascom's Transmittal No. 852. Accordingly, we suspend Transmittal No. 852 for one day following the effective date and make it subject to the investigation initiated in the *Transmittal 790 Suspension Order*. These rates will also be subject to an accounting order to facilitate any refunds that may later be necessary. ATU-LD's generalized, unsupported allegations of harm do not warrant a longer suspension. Our accounting order will assure that ATU-LD will be able to receive refunds of any improper amounts charged to it should the Commission ultimately determine that Alascom's tariff is unlawful.

7. In the *Market Structure Order*, the Commission stated that "[i]n order to process Alascom's common carrier services tariff by the required effective date, we require that Alascom file its [initial] tariff and cost support information 120 days before . . . January 1, 1996 . . . [and that] . . . [t]he tariff . . . be revised annually thereafter on the schedule set forth in Section 69.3(a) of the Commission's Rules (footnotes omitted)." <sup>17</sup> Thus, the *Market Structure Order* makes clear that Alascom was required to file its proposed tariff on a minimum of 90 days' notice. We remind Alascom that it is required to file tariffs on the correct notice period. In any event, in the present case, Alascom's tariff has been deferred out to the statutory maximum of 120 days. Thus, we do not believe that Alascom's filing of its tariff on 45 days notice has prejudiced any party, or, warrants its rejection.<sup>18</sup>

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the revisions to Alascom, Inc. Tariff F.C.C. No. 11 contained in Transmittal No. 852 ARE SUSPENDED for one day from its effective date and an investigation of that tariff transmittal is instituted and included in CC Docket No. 95-182.

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<sup>16</sup> Alascom, Inc., Tariff F.C.C. No. 11, Trans. No. 790, CC Docket No. 95-182, 11 FCC Rcd 3703 (Com.Car.Bur. 1995) (*Transmittal 790 Suspension Order*) (suspending and investigating Alascom Transmittal Nos. 790 and 797). See also Alascom Revisions to Tariff F.C.C. No. 11, Trans. No. 807, CC Docket No. 95-182, 11 FCC Rcd 10833 (Com.Car.Bur. 1996) (suspending and investigating Alascom Transmittal No. 807).

<sup>17</sup> *Market Structure Order*, 9 FCC Rcd at 3027 (para. 23). Section 69.3(a) of the Commission's Rules, 47 C.F.R. § 69.3(a), establishes a minimum of 90 days' notice for tariff filings covered by that section. This is the "schedule" to which the *Market Structure Order* refers.

<sup>18</sup> In order to provide for a complete record, we accept the ATU-LD Supplemental Petition and the ATU-LD Response to the Alascom Supplemental Reply. See n. 4, *supra*.

9. IT IS FURTHER ORDERED that Alascom, Inc., SHALL FILE tariff revisions within five business days of the release date of this Order to reflect this suspension.

10. IT IS FURTHER ORDERED that, for these purposes, we waive Sections 61.56, 61.58, and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, and 61.59. Alascom should cite the "DA" number of the instant Order as the authority for this filing.

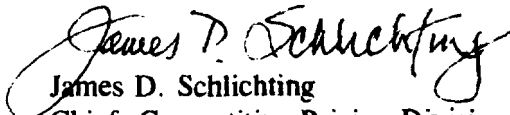
11. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, ALASCOM SHALL KEEP ACCURATE ACCOUNT of all amounts received by reason of the rates that are the subject of this investigation.

12. IT IS FURTHER ORDERED that the "Petition to Enforce 90 Day Notice Period of Alaska Market Structure Order, and to Reject, or In the Alternative , to Suspend and Investigate" Alascom Transmittal No. 852 filed by ATU Long Distance, Inc., IS GRANTED to the extent discussed above.

13. IT IS FURTHER ORDERED that the petition to suspend and investigate Alascom Transmittal No. 852 filed by General Communications, Inc., IS GRANTED.

14. IT IS FURTHER ORDERED that the motion filed January 10, 1997, by Alascom, Inc., to strike the "Response of ATU-LD to Supplemental Reply of Alascom, Inc.," IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

  
James D. Schlichting  
Chief, Competitive Pricing Division  
Common Carrier Bureau